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EX PARTE OR LATE FILED



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March 22, 1999

HAND DELIVERY

Magalie Roman Salas  
Secretary, Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RECEIVED  
MAR 22 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MCI Telecommunications Corporation Petition for Rulemaking  
Regarding Billing and Collection Services Provided by Local  
Exchange Carriers for Non-Subscribed Interexchange Services,  
RM 9108, Ex Parte Notice

Dear Ms. Salas:

On Friday, March 19, 1999, at the request of Federal Communications Commission's staff, GTE met with Frank G. Lamancusa, Chief of the Common Carrier Bureau, Enforcement Division's Accelerated Complaint Resolution Branch, and Darius B. Withers, Attorney, Common Carrier Bureau, Enforcement Division, to discuss matters relevant to the above-captioned proceeding.

In the course of the meeting, GTE discussed and answered questions relevant to GTE's provision of billing and collection services to 900 services providers. In particular, GTE discussed the contents of the enclosed letter.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

  
Andre J. Lachance

Enclosure

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March 19, 1999

VIA HAND DELIVERY

Frank G. Lamancusa  
Chief, Accelerated Complaint Resolution Branch  
Common Carrier Bureau, Enforcement Division  
Federal Communications Commission  
2025 M Street, N.W., Room 6104  
Washington, D.C. 20554

RECEIVED

MAR 22 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Lamancusa:

On February 5, 1999, Mr. Edwin N. Lavergne delivered to the Accelerated Complaint Resolution Branch a letter aimed at convincing the Federal Communications Commission ("FCC" or "Commission") to accept a potential complaint against GTE in the Commission's accelerated complaint docket. The potential complaint concerns allegations that GTE plans to terminate billing and collection for all 900 number services.

Mr. Lavergne's letter argues (1) that the Commission "clearly" has "ancillary jurisdiction" under Title I of the Communications Act over GTE's provision of billing and collection ("B&C") services to 900 number providers, see Lavergne Letter at 1, and (2) that a complaint challenging GTE's B&C services to 900 providers "could be properly filed under Section 208 of the Act," see Lavergne Letter at 3. As explained herein, the Lavergne Letter is mistaken on both counts.

**I. A Complaint Challenging GTE's Provision (or Non-Provision) of B&C Services to Unaffiliated Entities Such as 900 Number Providers Cannot Be Brought Under Section 208, Because the Commission Has Repeatedly Held That Such Services Are Not "Common Carrier" Services.**

A complaint challenging GTE's B&C services to 900 providers could not properly be filed under § 208. Section 208(a) provides in relevant part that "[a]ny person . . . complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to [the] Commission by petition . . . ." 47 U.S.C. § 208(a) (emphasis added). The Commission has repeatedly held that the provision of B&C service to an unaffiliated carrier or provider "is not a common carrier offering." Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, 8 F.C.C. Rcd. 8697, 8697 (1993) ("Sprint 900 Order") (emphasis added). See also Detariffing of Billing and Collection Services, 102 F.C.C. 2d 1150, 1169 (1986) ("Detariffing Order") ("It also appears doubtful that billing and collection for another carrier can properly be described as a 'common carrier'").

service even if it were deemed to be a 'communication' service."); The Public Service Commission of Maryland and Maryland People's Counsel Applications for Review of a Memorandum Opinion and Order by the Chief, Common Carrier Bureau Denying the Public Service Commission of Maryland Petition for Ruling Regarding Billing and Collection Services, 4 F.C.C. Rcd. 4000, 4004 (1989) ("Maryland PSC Order") ("The Detariffing Order found that interstate billing and collection services offered by LECs to IXC's are not common carrier services subject to our Title II jurisdiction."); Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Credit Cards, 7 F.C.C. Rcd. 3528, 3533 n.50 (1992) ("Joint Use Calling Cards Order") ("Billing and collection, of course, remains outside the scope of Title II because it is not a common carrier service."); Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Credit Cards, 12 F.C.C. Rcd. 1632, 1645 (1997) ("Joint Use Calling Cards Reconsideration Order") ("[C]arrier billing or collection for the offering of another unaffiliated carrier is not a communications service for purposes of Title II of the Act, i.e., it is not a com[m]on carrier communication service.").

In reaching the conclusion that the provision of B&C services to unaffiliated carriers and providers is not a "common carrier" service, the Commission has "considered the extent to which the service provider faces competition in the provision of the service at issue." Sprint 900 Order, 8 F.C.C. Rcd. at 8699. In the Detariffing Order, the Commission found that provision of B&C services by LECs to unaffiliated IXC's was subject to competition (and therefore not a "common carrier" service), because (even back in 1986) "[e]ntities other than communications companies, such as credit card companies, often provide billing and collection service for other companies." Detariffing Order, 102 F.C.C. 2d at 1169. Similarly, in the Sprint 900 Order, the Commission concluded that (as of 1993) "the billing and collection services that IXC's provide to IPs [and specifically to 900 number providers] are open to even greater potential competition than the LEC billing and collection services which the Commission found to be subject to competition in its Detariffing Order." Sprint 900 Order, 8 F.C.C. Rcd. at 8699 (emphasis added). In light of these directly on-point rulings, it is beyond dispute that provision of B&C services by a LEC such as GTE to 900 number IPs is sufficiently competitive as not to constitute a "common carrier" offering.

The Commission's precedents thus establish that, when GTE is providing B&C services to unaffiliated 900 number providers -- or imposing conditions on the provision of such B&C services, or electing not to provide such B&C services at all -- GTE is not acting as a "common carrier." See, e.g., Sprint 900 Order at 8698-99 ("The Commission has clearly established that a single firm that is a common carrier in some roles need not be a common carrier in other roles. Thus, that Sprint Telemedia is a common carrier for other purposes is not determinative.") (emphasis added); see also id. at 8702 ("Sprint Telemedia is not acting in the role of a common carrier when it provides billing and collection services."). Accordingly, a complaint about GTE's provision or non-provision of B&C services to 900 number providers would not be a complaint about "anything done by [a] common carrier," and therefore could not properly be brought under Section 208.

**II. Although the Commission Has Held That It May, in Certain Circumstances, Invoke Its Title I Ancillary Jurisdiction to Regulate the Provision of B&C Services to Unaffiliated Providers, Those Circumstances Are Not Present Here.**

Although the Commission has repeatedly held that B&C services performed by carriers for unaffiliated carriers and providers are not subject to regulation under Title II of the Act (because those are not "common carrier" services), the Commission has gone on to state, in those decisions, that it "could invoke [its] ancillary jurisdiction under Title I of the Communications Act" for the purpose of regulating B&C services to unaffiliated carriers or providers. Detariffing Order, 102 F.C.C. 2d at 1169 (emphasis added). See also Sprint 900 Order, 8 F.C.C. Rcd. at 8700; Maryland PSC Order, 4 F.C.C. Rcd. at 4000, 4004; Joint Use Calling Cards Order, 7 F.C.C. Rcd. at 3533 n.50; Joint Use Calling Cards Reconsideration Order, 12 F.C.C. Rcd. at 1645-46. The Lavergne Letter is mistaken, however, in suggesting that the Commission's Title I ancillary jurisdiction automatically applies in this case. In order for the Commission to invoke its Title I ancillary jurisdiction, certain circumstances must be present, and the Commission's precedents make clear that those circumstances are absent here.

In the Detariffing Order -- which the Lavergne Letter cites as supporting the exercise of Title I ancillary jurisdiction in this case -- the Commission in fact declined to exercise its ancillary jurisdiction to regulate LECs' B&C service to IXC's. The Commission explained that:

The exercise of ancillary jurisdiction requires a record finding that such regulation would "be directed at protecting or promoting a statutory purpose." We conclude that because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period. Although we cannot quantify the market shares of the various billing and collection vendors, the record clearly indicates that significant competition exists and will continue to develop.

102 F.C.C. 2d at 1170 (emphasis added).

Even more closely on point, the Commission in the Sprint 900 Order elected not to exercise its Title I ancillary jurisdiction to regulate Sprint's provision of B&C service to 900 number providers. There, the Commission again noted that the exercise of Title I ancillary jurisdiction is permissible "if such regulation is 'necessary to ensure the achievement of [its] . . . statutory responsibilities,'" 8 F.C.C. Rcd. at 8700 (citing Maryland PSC Order and Detariffing Order), but concluded that exercising Title I jurisdiction in the 900 number B&C context was not "necessary to ensure achievement of [its] statutory responsibility," id. at 8701. In reaching that conclusion, the Commission expressly rejected the arguments that Sprint's refusal to provide B&C to all 900 number providers violated the First Amendment and

"harm[ed] First Amendment values." Id. The Commission explained -- in a discussion that is directly applicable to GTE's current situation -- that:

Sprint Telemedia has not denied IPs access to its transmission facilities, only to its billing and collection service. There is no basis in the current record for even concluding that the lack of IXC billing and collection will significantly threaten the availability of 900 services, much less that it would deprive the American public of an ample array of alternative information sources.

Id. at 8701-02.<sup>1</sup> The Commission also rejected the argument that it should require Sprint to offer billing and collection for all 900 services in order "to foster new and innovative services and technologies"; instead, it found that "the public interest in service and innovation" was not threatened by Sprint's decision not to provide B&C services for certain 900 providers. Id. at 8702. Finally, the Commission found "no evidence on the record that Sprint Telemedia [had] acted in an unreasonable manner in limiting the provision of 900 billing and collection service," and specifically noted, in this connection, the "empirical evidence that customers actually do" "associate an IXC with the services it sends bills for."<sup>2</sup> Id. For these reasons -- all of which are applicable to the present case -- the Commission found "no reason to exercise [its] Title I jurisdiction in this case." Id. at 8702 (emphasis added).

The Detariffing Order and (even more so) the Sprint 900 Order thus are directly on point (unlike the cases cited in the Lavergne Letter) and foreclose any argument that the exercise of Title I ancillary jurisdiction would be appropriate in this case.

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<sup>1</sup> Like Sprint, GTE would not be "den[ying] IPs access to its transmission facilities, only to its billing and collection service." Accordingly, the Lavergne Letter's assertion that "[t]he discontinuation of billing and collection services by GTE would sever access to all 900 services and, thus, justifies the exercise of Title I jurisdiction in this case," Lavergne Letter at 3, is squarely foreclosed by this portion of the Sprint 900 Order. Likewise, the two decisions relied on by the Lavergne Letter to support the exercise of Title I ancillary jurisdiction -- the Maryland PSC Order and the Petition for an Expedited Declaratory Ruling, 8 F.C.C. Rcd. 698 (1993) -- are wholly inapposite, because they involved challenges to actions relating to the wholesale cut-off of 900 number or interstate access, a threat that simply is not present here.

<sup>2</sup> Significantly, the Commission found that the nondiscrimination standard applicable to Sprint Telemedia's conduct was different from (and less stringent than) the common carrier nondiscrimination standard. Citing to Carlin Communications v. Mountain States Tel. & Tel., 827 F.2d 1291, 1294 (9<sup>th</sup> Cir. 1987), the Commission found it appropriate to hold Sprint Telemedia to "a standard of nondiscrimination that did not preclude distinctions based on reasonable business classifications." Id. at 8702.

Frank G. Lamancusa

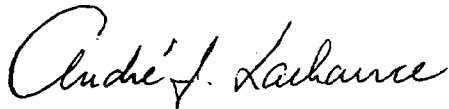
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## CONCLUSION

In sum, both of the arguments advanced in the Lavergne Letter are belied by Commission precedent. First, a complaint challenging GTE's provision (or non-provision) of B&C services to 900 number providers could not be properly filed under Section 208, because GTE is not acting in its capacity as a common carrier when it provides B&C service to 900 number providers. Second, although the Commission may, in appropriate circumstances, exercise Title I ancillary jurisdiction to regulate a carrier's B&C service to other carrier, the relevant precedents make clear that those circumstances are absent here.

Sincerely,

A handwritten signature in cursive script that reads "Andre J. Lachance".

Andre J. Lachance